

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

10 Presently before the Court is Defendant CIT Bank's motion to stay discovery (ECF No. 25),
11 filed on April 11, 2017. Plaintiff Steven Pinchuk filed a response (ECF No. 27) on April 25, 2017,
12 and Defendant filed a reply (ECF No. 29) on May 2, 2017.

13 Defendant moves to stay discovery pending a decision on its motion to dismiss (ECF No. 13).
14 In support of a stay of discovery, Defendant argues that its motion to dismiss, if granted, would
15 dispose of all claims, that the motion is likely to be granted, and that no discovery is necessary for
16 the Court to adjudicate the motion. Plaintiff opposes a stay, arguing that discovery is necessary for
17 the Court to properly rule on the motion to dismiss, and that the motion to dismiss is not certain to be
18 granted.

19 It is within the Court's broad discretion over discovery to determine whether a stay of
20 discovery is appropriate. *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). In determining
21 whether to stay discovery pending resolution of a dispositive motion, the party seeking the stay
22 "carries the heavy burden of making a 'strong showing' why discovery should be denied." *Turner*
23 *Broad. Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). In order to determine if a
24 stay is appropriate, the court considers whether (1) the pending motion is potentially dispositive of
25 the entire case or at least dispositive of the issue on which discovery is sought, and (2) the motion
26 can be decided without additional discovery. *Ministerio Roca Solida v. U.S. Dep't of Fish &*
27 *Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013). Further, "a stay of discovery should only be ordered

1 if the court is convinced that a plaintiff will be unable to state a claim for relief.” *Tradebay LLC V.*
2 *eBay, Inc.*, 278 F.R.D. 597, 603 (D. Nev. 2011). Courts considering stays in this district have found
3 that this standard is not easily met (*Kor Media Grp., LLC v. Green*, 294 F.R.D. 579, 583 (D. Nev.
4 2013)), and that “[a]bsent extraordinary circumstances, litigation should not be delayed simply
5 because a non-frivolous motion has been filed.” *Id.* (quoting *Trzaska v. Int'l Game Tech.*, 2011 WL
6 1233298, at *3 (D. Nev. Mar. 29, 2011)).

7 To determine whether a stay of a potentially dispositive motion is appropriate, courts in this
8 district take a “preliminary peek” at the motion. *See Tradebay*, 278 F.R.D. 602-603. This inquiry is
9 not meant to prejudge the motion, but rather to determine whether a stay would help the court to
10 secure the “just, speedy, and inexpensive determination” of the action as required by Rule 1 of the
11 Federal Rules of Civil Procedure. *See Id.*

12 Here, Defendants argue that their motion to dismiss is potentially dispositive, while Plaintiff
13 argues that the Court should not consider the motion to be dispositive because he would likely be
14 given leave to amend his complaint were the Court to grant the motion to dismiss. However, as the
15 motion to dismiss does appear to move for dismissal of all current claims, the Court will treat the
16 motion to dismiss as a dispositive motion.

17 The parties also disagree as to whether the motion may be adjudicated without further
18 discovery, but the Court finds no binding authority for Plaintiff’s argument that discovery is
19 necessary to flesh out its Fair Credit Reporting Act (FCRA) before a decision may be made on the
20 motion to dismiss. The Court finds that no discovery is necessary to make a decision on the motion
21 to dismiss, and will therefore move on to its preliminary peek.

22 Defendants argue that Plaintiff’s FCRA claim must be dismissed because it contains no
23 specific facts and fails to allege any injury. After its preliminary peek, the Court is not convinced.
24 While the complaint does not specify any dates, the complaint appears to be sufficiently specific as
25 to the parties and their alleged actions to fairly inform Defendants of Plaintiff’s claim against it, and
26 to give it an opportunity to defend itself effectively. Further, Plaintiff’s allegation that his credit
27 score was affected may constitute an adequate harm to survive the motion to dismiss. While

1 Defendants arguments to the contrary are not without merit, it does not appear at this stage that
2 Defendant's position is so ironclad that it will certainly prevail. The preliminary peek has not
3 convinced the Court that the motion to dismiss is certain to be granted, therefore a stay is not
4 warranted at this time.

5 IT IS THEREFORE ORDERED that Defendants' motion (ECF No. 25) to stay discovery is
6 DENIED.

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8 DATED: May 24, 2017.

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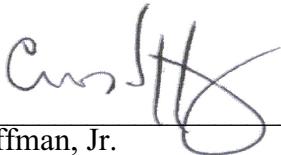
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C.W. Hoffman, Jr.
United States Magistrate Judge